

Crimes Against Public Peace
Unlawful Assembly

Commonwealth v. Abramms
Appeals Court, June 23, 2006

The offense of unlawful assembly under c. 269, § 2 is a separate offense from the offense of riot.

The defendant participated in an anti-war protest and was convicted under c. 269, § 2, of failing to obey the order of a police officer to disperse from an "unlawful assembly." On appeal, the defendant claims that on its face the statute is unconstitutionally overbroad and vague unless the offense of unlawful assembly is qualified by the additional statutory terms "riotous or tumultuous." The court disagreed. Although riot is among the offenses included within c. 269, §§1 & 2, the statute refers to rioters or persons unlawfully assembled. The use of the disjunctive supports the conclusion that unlawful assembly is a separate offense from that of rioting.

The defendant also argued that by authorizing police to issue and enforce a dispersal order whenever there is an unlawful, riotous or tumultuous assembly, the statute confers too much discretion on police and potentially impinges on the rights to assemble and freedom of speech. After reviewing the common law to ascertain the definition, the Appeals Court held that the term "unlawful assembly" should be defined as any gathering (otherwise meeting the requirements of the statute's provision) the members of which have formed a common intent to commit an act of violence. "This construction avoids any question of constitutional infirmity; only peaceful assemblies, not violent gatherings, are protected by the First Amendment and art. 19."